



NEW YORK  
CITY BAR

**COMMITTEE ON  
NON-PROFIT ORGANIZATIONS**

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July 16, 2013

The Honorable Andrew M. Cuomo  
Governor of New York State  
New York State Capitol Building  
Executive Chamber  
Albany, NY 12224

Re: Non-Profit Revitalization Act of 2013 (S.5845/A.8072)

Dear Governor Cuomo:

The Committee on Non-Profit Organizations of the New York City Bar Association (the “NPOC”) strongly supports the Non-Profit Revitalization Act of 2013 (the “Act”), which makes significant and needed changes to New York’s Not-for-Profit Corporation Law (the “N-PCL”) and other nonprofit laws. We encourage you to sign the bill.

The current nonprofit laws include many archaic provisions that are needlessly confusing and burdensome to existing New York nonprofits. These provisions also cause many newly-formed New York-based nonprofits to incorporate instead under the laws of other states, thereby limiting supervision of such nonprofits by New York authorities. The Act remedies many of the weaknesses in the current law and strengthens New York law to enhance governance and accountability by setting forth clearer expectations of board duties.

The NPOC is a diverse 42-member committee of the New York City Bar Association. Some members are law firm attorneys representing nonprofits, some are in-house counsel for charitable organizations, and a few are legal scholars. The Committee’s members represent multi-million dollar institutions and tiny charities, institutions in many parts of the charitable sector, and institutions that have been serving New York for more than a century as well as groups now seeking to incorporate as non-profits.

We are pleased to see that the Act is responsive to many of the reforms we suggested in a letter dated May 23, 2011<sup>1</sup>, by

- a) replacing the need to obtain time-consuming pre-formation and pre-amendment consent from the State Education Department for nonprofits which are not schools, libraries, museums or historical societies with post-formation notification and allowing nonprofits to include disclaimer language in their certificates of incorporation which, if truthful, obviates the need for preapprovals by or notices to other agencies and organizations;
- b) replacing the four confusing “types” of nonprofit corporations with a simpler distinction between “charitable” and “non-charitable” corporations;
- c) modifying certain approval requirements for real estate transactions;
- d) allowing facsimile and electronic communications for notices of member meetings and for member and director action;
- e) revising provisions regarding board size to allow the by-laws of all corporations (not just corporations with members) to provide a range rather than a fixed number of directors;
- f) simplifying the procedures for certain actions, including (i) asset sales, (ii) changes of purposes, (ii) mergers and consolidations and (iv) dissolutions;
- g) streamlining corporate filing procedures, by clarifying that certificates of incorporation do not need to state planned activities, requiring the Department of State to review filings solely on the basis of whether they meet N-PCL requirements and allowing the Department of State to make corrections to filings to correct certain non-material errors with the consent of the filer; and
- h) clarifying the role and fiduciary duties of directors and officers.

The Act also reduces costs for many nonprofits by raising the revenue threshold for required annual financial audits to be more consistent with the thresholds in other states. It also exempts grant writers from professional fundraising registration requirements, allows filings under the Executive Law and Estates, Powers and Trusts Act to be made electronically, allows mergers by religious corporations, clarifies that key personnel of New York nonprofits are subject to New

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<sup>1</sup> Available at <http://www2.nycbar.org/pdf/report/uploads/20072125-LettertoNYSAGnotingtheneedtoreformNYSlawsaffectingnonprofits.pdf>. This letter generally follows the recommendations of this committee with respect to a proposal of the State Bar to reform the N-PCL, issued on January 21, 2010 and available at <http://www2.nycbar.org/pdf/report/uploads/20071870-ProposedRevisionstoNewYorksNot-for-ProfitCorporationLaw.pdf>), which followed a public forum hosted by the Committee at the House of the Association on November 2, 2009 entitled *Ideas for Change: A Conversation About Reforming New York Nonprofit Law and Regulations*.

York jurisdiction, bars employees from serving as the chair of the board, requires nonprofits to adopt written conflicts policies, strengthens certain good governance practices regarding conflicts-of-interest and related-party transactions, enhances the privacy rights of officers and directors by removing requirements to provide home addresses and allows the Attorney General to bring actions against key employees as well as officers and directors, among other changes. These changes will allow New York nonprofits to better serve their constituencies by relieving them of certain needless burdens while at the same time enacting certain procedures aimed at ensuring that such nonprofits will be better governed.

We had previously expressed concerns with respect to a 2012 bill, S.7431, which proposed onerous governance procedures that would undercut the reforms to the operational provisions of the N-PCL and therefore not serve to encourage new nonprofits to form in New York instead of Delaware or elsewhere.<sup>2</sup> The Non-Profit Revitalization Act is a substantial improvement over that 2012 bill.

We applaud the many respects in which the Act is responsive to our concerns. We particularly appreciate the changes which make the new governance procedures less onerous (especially for smaller and mid-sized nonprofits), recognize that new provisions regarding related party transactions should apply only when the related party has a substantial financial interest in the transaction, allow delegation in more instances (*e.g.*, with respect to real estate transactions), allow boards to continue to rely on work done at the committee level, raise the threshold for adoption of whistleblower policies, and conform certain key definitions with those used under the Internal Revenue Code, regulations and forms.

We cannot overemphasize how much we appreciate the willingness of the drafters of the Act to consider the views of the nonprofit community in preparing this legislation.

We therefore heartily endorse the Act, believing that it will greatly benefit the nonprofit community and the people of New York.

Reform of the N-PCL and other New York nonprofit laws should be a continuing process, however, not just something done only once every 40 years (when New York's nonprofit laws were last overhauled). We will therefore be proposing in the future technical corrections to certain provisions adopted in the Act, as well as additional ideas for nonprofit reform, both of which can be considered after the Act becomes law.

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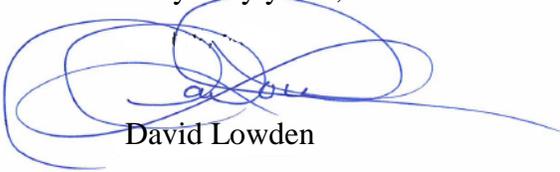
<sup>2</sup> See our letters dated September 21, 2012 (available at <http://www2.nycbar.org/pdf/report/uploads/20072125-LettertoNYSAGnotingtheneedtoformNYSlawsaffectingnonprofits.pdf>), and March 6, 2013 (available at <http://www2.nycbar.org/pdf/report/uploads/20072429-CommentonAGsNonProfitRevitalizationAct.pdf>).

*Honorable Andrew W. Cuomo  
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We should not let this moment, when interest in bringing about greatly needed reform of the N-PCL seems to be at its height, to be lost. We therefore encourage you to promptly approve the Act.

Very truly yours,



David Lowden

cc: Fran Barrett, InterAgency Coordinator for Not-for-Profit Services  
Hon. James Brennan, NYS Senate  
Peter Kiernan, Esq., Chairman, Law Revision Commission  
Jason Lilien, Esq., Charities Bureau  
Robert Pigott, Esq., Chair of the NPOC Subcommittee on N-PCL Reform  
Hon. Michael Ranzenhofer, NYS Assembly